



# RAVALLI COUNTY ATTORNEY

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**TO:** Planning

**CC:** Ravalli County Commissioners ✓

**FROM:** Alex Beal, Deputy *AB*

**DATE:** December 18, 2007

**RE:** SSC request for clarification of "emergency"

**RECEIVED**

**DEC 18 2007**

Ravalli County Commissioners

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Thank you for forwarding me the request from the Streamside Setback Committee for a clarification of what constitutes an "emergency" per MCA § 76-2-206. The SSC had requested that CTAP be contacted regarding this matter. I see no need as their questions are relatively simple.

They sought answers to the following three questions:

1. Whether or not interim zoning can be used for an issue like streamside setbacks for new buildings;
2. If interim zoning can be used to address an issue like stream setbacks, under what circumstances can it be used (what criteria have to be met); and
3. Are there any examples of how interim zoning has been used by other counties?

The answer to #1 is simply and clearly "yes." The answer to #3 is also yes. Lewis & Clark County has attempted to use the process to combat water quality issues. Missoula County has previously used it to prevent all gravel mining operations in residentially zoned areas. As you well know, Ravalli County has used it to cap the size of retail businesses (repealed by voters) and to limit subdivisions to "1 per 2." I have no doubt that there are others. The uses are myriad. However, as streamside setback zoning is clearly allowable, the question appears somewhat unnecessary.

The answer to #3 involves a bit more explanation. The Standard State Zoning Enabling Act ("SSZEA") was the model act upon which Montana's 1929 zoning statutes were based. The Montana Attorney General has cited to the comments to that act to explain the purpose of interim zoning. "One to three years may be required to complete the essential studies and evolve a comprehensive plan.... During this period of study and enactment, the development of the community continues. If the evolving land-use plan and its implementing regulations are made

public, the period between public knowledge and final enactment may be used by some landowners and developers to construct building and establish uses which will disrupt the land-use plan.” 46 Op. A.G. No. 5, p 4-5. The SSZEA discourages the use of interim measures, requiring that all procedural requirements be met, even for interim measures. Montana, however, established an entirely different procedure, as set out in MCA § 76-2-206.

The Attorney General has clarified that the interim zoning procedure may be used “(1) where proper zoning procedures have not been satisfied, (2) some matter of urgency requires zoning to protect public safety, health, and welfare, (3) the interim measure addresses the urgent matter, (4) so long as more formal planning processes have been initiated, or will be initiated within a reasonable time.” 49 Op. A.G. No. 23, p 8. Number 1 is ~~permissive, not mandatory, i.e. “even if…”~~ Number 4 is certainly the stated policy of the Ravalli County Commissioners, and is therefore met in this matter. Numbers 2 and 3 are where the SSC should focus their work.

The Montana Attorney General has opined that an emergency exists “if there is some exigent circumstance impacting the public health, safety and welfare, and zoning is required to address the exigency.” 49 Op. A.G. No. 23, p 8. MCA § 76-2-203(1) explains that zoning is designed to:

Lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

Any draft emergency zoning documents the SSC prepare should clarify what the exigency is that they are attempting to fix, how the public health, safety, or welfare is affected, and how their zoning regulations fix that problem. The question of whether an “exigency” exists is not one for them to seek further legal counsel on—it is one that they must decide themselves. They should explain that exigency in as much detail as possible, as should explain how their proposed solution lessens that exigency in a similarly detailed fashion. If they have questions as to whether the final product passes legal muster, I will gladly give my opinion at that time.